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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Defendant Universal Life Church Monastery Storehouse, Inc.
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Date	12/09/2020
Attachments	Mot. 1-Day Ext. FINAL 120920.pdf(124641 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE
MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE,

Applicant.

Opposition No. 91237315

MOTION TO EXTEND OR RE-OPEN
REPLY DEADLINE BY ONE
CALENDAR DAY

I. INTRODUCTION

Applicant Universal Life Church Monastery Storehouse (“Applicant”) hereby moves the Board for a one-calendar-day extension of time in which to file its Reply in Support of Motion to Order Service of Testimony Depositions, Strike Opposer’s Notice of Reliance, and Extend Applicant’s Trial Period. Applicant was unable to file its reply on the due date (December 8th) because of technical unavailability of the ESTTA system. However, Applicant timely served its reply on Opposer on December 8th, and was able to file its reply this morning, December 9th, within 12 hours of the due date. The requested extension will not affect any other deadlines in this matter.

II. BACKGROUND

Opposer filed and served its response to Applicant’s Motion to Order Service of Testimony Depositions, Strike Opposer’s Notice of Reliance, and Extend Applicant’s Trial Period on November 18, 2020. 56 TTABVue 1. Accordingly, pursuant to CFR 2.127(e)(1), Applicant’s

deadline to file and serve a reply was yesterday, December 8, 2020. Applicant timely finalized and served its reply on Opposer's counsel yesterday, December 8th. *See* Matesky Decl., submitted herewith, ¶ 4.

However, Applicant was unable to file its reply with the Board via the ESTTA system. Applicant attempted to file its reply multiple times yesterday, using at least three different internet browsers (Firefox, Chrome, and Edge), and using both wired and wireless Internet connections. Each time, the ESTTA page displayed a message saying "Database used by ESTTA is not available at this time. Please try again later." *Id.* ¶ 5-6. After multiple unsuccessful attempts, Applicant's counsel sent a message to ESTTA@uspto.gov regarding the problem, and informed Opposer's counsel of the issue. *Id.* ¶ 7.

This morning, at 9am Pacific time on December 9, 2020, approximately 12 hours after the reply deadline had passed, Applicant was able to file its reply—unchanged from the version it timely served on Opposer on December 8, 2020—via the ESTTA system. *Id.* ¶ 8.; *see* 58 TTABVue 1.

III. ARGUMENT

Applicant respectfully requests that the Board extend the time in which to file its reply by one-day (in fact, 12 hours would suffice), because the delay in filing was not due to Applicant's lack of diligence, Applicant timely served its reply on Opposer, and the 12-hour delay in filing would work no prejudice on either Opposer or the Board. A party seeking to extend a period of time must show good cause for such extension. *See* TBMP § 509.01(a) and sourced cited therein. A party seeking to re-open the period of time in which to accomplish an act must show excusable neglect. *See* TBMP § 509.01(b). "[T]he excusable neglect determination must take into account all relevant circumstances surrounding the party's omission or delay, including (1) the danger of prejudice to the

nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith.” *Id.* (citing *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380, 395 (1993); *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 (TTAB 1997)).

In this case, even under the harsher “excusable neglect” standard, all four factors weigh in favor of granting Applicant’s requested 1-day re-opening/extension of time. First, the non-movant will suffer no prejudice, because it was timely served, and because briefing is now complete on Applicant’s motion. Second, Applicant filed its reply within 12 hours of the deadline, and a 1-day extension will not cognizably impact on these judicial proceedings. Third, the reason for delay was outside of Applicant’s control. Applicant had not had any problems filing documents via ESTTA until December 8th, had successfully filed a document via ESTTA in this proceeding on December 4th, and undertook all measures it could to try to file its completed reply on December 8th. Applicant was simply unable to do so. Fourth, Applicant has acted in good faith. Applicant timely served its completed reply on Opposer, obtained no benefit whatsoever from the technical inaccessibility of the ESTTA system, and filed its reply as soon as it was feasibly possible. Thus, any “neglect” on Applicant’s part is “excusable” under the binding legal framework, and Applicant asks that its motion be granted.

IV. CONCLUSION

For the reasons set forth above, Applicant requests that the Board grant a 1-day extension/enlargement of the time in which to file Applicant’s Reply in Support of Motion to Order Service of Testimony Depositions, Strike Opposer’s Notice of Reliance, and Extend Applicant’s

Trial Period. Such extension/enlargement will not affect any other deadlines in this matter.

DATED: December 9, 2020

Respectfully submitted:

MATESKY LAW^{PLLC}

s/ Michael P. Matesky, II/

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DECLARATION OF MICHAEL P.
MATESKY, II

I, Michael P. Matesky, II, declare as follows:

1. I am and at all relevant times have been counsel for Applicant in this matter.
2. I am over the age of eighteen years and otherwise competent to testify in this matter.
3. I make this declaration based on my personal knowledge.
4. On December 8, 2020, I finalized Applicant's Reply in Support of Motion to Order Service of Testimony Depositions, Strike Opposer's Notice of Reliance, and Extend Applicant's Trial Period, including my declaration in support thereof ("Applicant's Reply"), and timely served Applicant's Reply on Opposer's counsel by email delivery.
5. Despite multiple attempts, I was unable to file Applicant's Reply with the Board via the ESTTA system on December 8, 2020.
6. On December 8, 2020, I tried to file Applicant's Reply via the ESTTA system multiple times, using at least three different Internet browsers (Firefox, Chrome, and Edge), and

using both wired and wireless Internet connections. Each time I attempted to file Applicant's Reply via the ESTTA system on December 8, 2020, the ESTTA page displayed a message saying "Database used by ESTTA is not available at this time. Please try again later."

7. After multiple unsuccessful attempts, I sent a message to ESTTA@uspto.gov regarding the problem, and informed Opposer's counsel of the issue, on December 8, 2020.

8. This morning, at approximately 9am Pacific time on December 9, 2020, I was able was able to successfully file Applicant's Reply—unchanged from the version I timely served on Opposer on December 8, 2020—via the ESTTA system.

DATED: December 9, 2020 at Seattle, Washington

s/ Michael P. Matesky, II/

Michael P. Matesky, II

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on Opposer's counsel of record by email transmission to nancy.stephens@foster.com, pursuant to Trademark Rule § 2.119(b), 37 C.F.R. § 2.119(b).

Dated: December 9, 2020

s/ Michael P. Matesky, II
Michael P. Matesky, II